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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X		
BEVOLYN DARBY,	:	ECF
Individually and on Behalf of All Other	:	17 Civ. 5370 (RMB)
Persons Similarly Situated,	:	
	:	
Plaintiffs,	:	
	:	
-against-	:	
	:	
STERLING HOME CARE, INC., MARK R. ZWERGER,	:	
MATTHEW G. ANDERSON, MICHELE THOMAS	:	
EILEEN KILLEEN, and JOHN DOES #1-10,	:	
	:	
Defendants.	:	
-----X		

**DECLARATION OF WILLIAM C. RAND IN SUPPORT OF PLAINTIFF'S  
APPLICATION FOR PRELIMINARY APPROVAL OF CLASS AND COLLECTIVE  
ACTION SETTLEMENT**

**EXHIBIT C**

**PROPOSER ORDER GRANTING PRELIMINARY  
APPROVAL OF  
COLLECTIVE AND CLASS SETTLEMENT**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X	
BEVOLYN DARBY,	:
Individually and on Behalf of All Other	:
Persons Similarly Situated,	:
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Plaintiffs,	:
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-against-	:
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STERLING HOME CARE, INC., MARK R. ZWERGER,	:
MATTHEW G. ANDERSON, MICHELE THOMAS	:
EILEEN KILLEEN, and JOHN DOES #1-10,	:
	:
Defendants.	:
-----X	

ECF  
17 Civ. 5370 (RMB)

**ORDER PRELIMINARILY APPROVING  
CLASS AND COLLECTIVE ACTION SETTLEMENT AND  
PROVIDING FOR NOTICE OF FAIRNESS HEARING**

**WHEREAS**, the class and collective action, *Bevolyn Darby v. STERLING Home Care, Inc., et al.*, Civil Action Number 17 CV 05370 (“Lawsuit”), is currently pending before this Court;

**WHEREAS**, the parties have made an application, pursuant to Federal Rules of Civil Procedure 23(e) and (g) for an order approving settlement of the claims alleged in the Lawsuit on a class basis (the “Settlement”) and appointing class counsel in accordance with a Settlement Agreement dated as of \_\_\_\_\_, 2019 (the “Agreement”), which, together with the exhibits annexed thereto, sets forth the terms and conditions for a proposed settlement of the Lawsuit against Defendants and for dismissal of the Lawsuit against Defendants with prejudice upon the terms and conditions set forth therein, and the Court has read and considered the Agreement, the exhibits annexed thereto, and the parties’ joint motion for approval; and

**WHEREAS**, all capitalized terms contained and not otherwise defined herein shall have the same meanings set forth in the Agreement.

**IT IS ON THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2019, HEREBY ORDERED AS FOLLOWS:**

1. The Court hereby preliminarily approves the Settlement set forth in the Agreement as being fair, just, and reasonable.

2. For purposes of the Settlement, the Court hereby preliminarily certifies a class as defined in the Settlement Agreement (hereinafter, the “Class”) consisting of all individuals who were employed by STERLING HOME CARE, INC. (“STERLING”) as home health aides on or between January 1, 2015 and October 1, 2015 whose paystubs showed they worked more than 40 hours in a week during that period as listed on Exhibit D of the Settlement Agreement.

3. The Court appoints the Named Plaintiff BEVOLYN DARBY as class representative and appoints as Class Counsel the Law Office of William Coudert Rand. and hereby approves the use of Hamlin & Burton as the Administrator.

4. The Agreement falls within the range of reasonableness and appears to be presumptively valid, subject only to the objections that may be raised at the final Fairness Hearing.

5. The Court approves, as to form and content, the Notice of Settlement attached as Exhibit A to the Agreement under Federal Rules of Civil Procedure 23(c) and (e), and finds that the mailing and distribution of the Notice substantially in the manner and form set forth in the Agreement constitutes the best notice practicable under the circumstances, and constitutes valid, due, and sufficient notice to all persons in the Class, complying fully with the requirements of Federal Rule of Civil Procedure 23, the Fair Labor Standards Act (the “FLSA”), the Constitution of the United States, and any other applicable laws.

6. A Fairness Hearing shall be held before this Court on \_\_\_\_\_, 2019, [not less than 90 days from the Class Action Fairness Act, (“CAFA”), 28 U.S.C. § 1715(b) notice

mailing date] at the United States District Court, Southern District of New York, U.S. Courthouse, 500 Pearl Street, New York, N.Y. 10007, to determine finally whether the proposed settlement of the Lawsuit on the terms and conditions provided for in the Agreement is fair, just, reasonable, adequate, and in the best interest of the Class, and should be approved by the Court; and whether entry of Judgment and Final Approval, as provided in the Agreement, should be entered.

7. Class Counsel, along with the Claims Administrator, are hereby authorized to supervise and administer the notice procedure as more fully set forth below:

A. On or before \_\_\_\_\_ [10 days from this Order], STERLING shall provide the Administrator and Class Counsel the following information for all Class Members: name, last known addresses, last known personal email addresses, if any, and dates of employment (the “Class Contact List.”).

B. On or before thirty (30) days from this Order (the “Notice Date”), the Administrator shall cause to be mailed by first-class mail and emailed if email address identified, a copy of the Notice of Settlement, substantially in the form annexed as Exhibit A to the Agreement, to all putative Class Members who can be identified or located with reasonable effort.

C. Class Members shall have thirty (30) days from the date that the Notice is mailed to opt-out of the settlement by mailing an Opt-Out Statement to the Administrator, containing the information required by the Agreement.

D. Class Members shall have thirty (30) days from the date that the notice is mailed to mail a Written Objection to the Administrator, containing the information required by the Agreement. Any statement of position or objection shall state the objector’s name, address, and telephone number and dates of employment with the Administrator, Hamlin

& Burton, and whether the objector intends to speak at the Fairness Hearing. Any member of the Class who does not make his or her objection in the manner provided in the Agreement shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness or adequacy of the proposed Settlement as incorporated in the Agreement, the releases provide for in the Agreement, the award of attorneys' fees, costs, and expenses to Class Counsel, and the award of an incentive payment for the Named Plaintiff, unless otherwise ordered by the Court.

E. Class Counsel and Defense Counsel shall file a Joint Motion for Judgment and Final Approval of the Settlement and the Agreement no later than fourteen (14) days before the Fairness Hearing.

F. The Court reserves the right to adjourn the date of the Fairness Hearing without further notice to the Class Members, and retains jurisdiction to consider all further applications arising out of or connected with the proposed settlement. Notice of any adjournment can be obtained from Class Counsel: William C. Rand, Esq., Law Office of William Coudert Rand, 501 Fifth Ave., 15<sup>th</sup> Floor, New York, New York 10017 (phone #212-286-1425) (fax #646-688-3078). The Court may approve the settlement, with such modifications as may be agreed to by Class Counsel and Defense Counsel, if appropriate, without further notice to the Class.

SO ORDERED

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United States District Judge

Dated: \_\_\_\_\_, 2019